
UNITED STATES DISTRICT COURT**EASTERN DISTRICT OF TEXAS**

UNITED STATES OF AMERICA

versus

TRENTARGUS RUMANE HOLT(1)

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§CRIMINAL ACTION NO. 4:07cr164.5
APPEAL NO. 10-40492**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On October 12, 2010, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that the Fifth Circuit Court of Appeals be notified of the finding that Defendant's untimely filing of his notice of appeal was not due to excusable neglect or good cause.

Rule 4(b)(1) of the Federal Rules of Appellate Procedure affords a criminal defendant fourteen (14) days in which to file a notice of appeal. Pursuant to Rule 4(b)(4) of the Federal Rules of Appellate Procedure, a district court may grant an additional thirty (30) days in which to file a notice of appeal upon a finding of excusable neglect or good cause. Since Defendant filed his notice of appeal within the additional thirty (30) day period, the Fifth Circuit remanded the case to this Court on July 7, 2010, for a determination of whether the untimely filing of the notice of appeal was due to excusable neglect or good cause. U. S. Magistrate Judge Amos L. Mazzant subsequently entered an Order on September 2, 2010, directing Defendant to file an affidavit with the Court by October 1, 2010, explaining whether the untimely filing of his notice of appeal was due to excusable neglect or good cause. The Court also ordered Defendant's retained counsel to file a report with the Court, explaining his knowledge of this matter.

On September 30, 2010, Defendant's retained counsel filed a report indicating that his representation concluded after sentencing.

In the Court's September 2, 2010 Order, the Court ordered Defendant to file an affidavit with the Court by October 1, 2010, explaining whether the untimely filing of his notice of appeal was due to excusable neglect or good cause. The Court's September 2, 2010 Order was received by Defendant on September 15, 2010. Defendant failed to file an affidavit with the Court, as ordered. Furthermore, Defendant has failed to file objections to the Magistrate Judge's Report and Recommendation. Defendant, therefore, has not offered any explanation as to whether the untimely filing of his notice of appeal was due to excusable neglect or good cause.

Having received the report of the United States Magistrate Judge, and no objections thereto having been timely filed, this Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court. It is accordingly

ORDERED that, in light of the foregoing, the Court finds that Defendant's untimely filing of his notice of appeal was not due to excusable neglect or good cause.

The Clerk is **ORDERED** to forward a copy of this memorandum to the Court of Appeals and to the parties in this lawsuit.

SIGNED at Beaumont, Texas, this 1st day of November, 2010.



MARCIA A. CRONE
UNITED STATES DISTRICT JUDGE